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Meta Platforms, Inc.

(f/k/a Facebook, Inc.)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FACEBOOK, INC., a Delaware
corporation,

Plaintiff,

v.

ILIKEAD MEDIA
INTERNATIONAL COMPANY
LTD., HUANG TAO, and CHEN
RAN CONG,

aka "Chen Xiao Cong,"

aka "Han Xiao Cong,"

aka "Ran Mao Ping,"

Defendants.

CASE NO.: 3:19-CV-07971-SK

**ADMINISTRATIVE MOTION TO
SEAL CONFIDENTIAL
INFORMATION IN SUPPORT OF
PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM FOR
ATTORNEYS' FEES AND COSTS**

FAC Filed: June 5, 2020

Complaint Filed: December 5, 2019

3:19-cv-07971-SK

ADMINISTRATIVE MOTION TO SEAL CONFIDENTIAL INFORMATION IN SUPPORT OF
PLAINTIFF'S SUPPLEMENTAL MEMORANDUM FOR ATTORNEYS' FEES AND COSTS

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Meta Platforms, Inc. (f/k/a Facebook, Inc.) respectfully submits this Administrative Motion to file under seal confidential information in support of Plaintiff's supplemental memorandum for attorney fees and costs. In particular, Plaintiff seeks: (1) to seal, by redaction, certain portions of the Supplemental Declaration of Ann Marie Mortimer in support of Plaintiff's supplemental memorandum for attorneys' fees and costs (the "Mortimer Declaration") that reference confidential Peer Monitor data; (2) to seal, by redaction, certain portions of the task entry narrative column of Exhibit A attached to the Mortimer Declaration, which disclose work product or privileged communications; and (3) to seal, in their entirety, the Peer Monitor reports attached to the Mortimer Declaration as Exhibits B and C.

This motion is made on the grounds that the portions of the Mortimer Declaration that reference the Peer Monitor reports and the Peer Monitor reports themselves contain data reflecting confidential, proprietary, and commercially sensitive information from Peer Monitor, a service from Thomson Reuters to which Hunton Andrews Kurth LLP ("Hunton") subscribes that reports data regarding law firms' financial information, and for which Hunton is contractually bound to maintain confidential. Additionally, this motion is made on the grounds that certain portions of the task entry narrative column of Exhibit A attached to the Mortimer Declaration contain attorney-client or attorney work product privileged information.

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1 The information that is the subject of this motion has not been the subject of a
2 previous request to file under seal.

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4 Dated: January 25, 2022

HUNTON ANDREWS KURTH LLP

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6 By: /s/ Ann Marie Mortimer
7 Ann Marie Mortimer
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Meta Platforms, Inc. (f/k/a Facebook, Inc.) seeks to file under seal confidential information in support of Plaintiff’s supplemental memorandum for attorney fees and costs. In particular, Plaintiff seeks: (1) to seal, by redaction, certain portions of the Supplemental Declaration of Ann Marie Mortimer in support of Plaintiff’s supplemental memorandum for attorneys’ fees and costs (the “Mortimer Declaration”) that reference confidential Peer Monitor data; (2) to seal, by redaction, certain portions of the task entry narrative column of Exhibit A attached to the Mortimer Declaration, which disclose work product or privileged communications; and (3) to seal, in their entirety, the Peer Monitor reports attached to the Mortimer Declaration as Exhibits B and C. The foregoing materials are only tangentially related to the underlying cause of action, and, as shown below, good cause exists for the sealing relief requested.

II. ARGUMENT

A. Legal Standard

While the public’s right to review judicial records is fundamental, the right to and scope of access are not absolute. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The presumption in favor of public access “can be overcome by sufficiently important countervailing interests.” *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1102 (9th Cir. 1999). A district court, after balancing the importance of access against the sensitiveness of the material in the case, may seal judicial records. *Id.*

A party seeking to seal a judicial record must articulate justifications for sealing that outweigh the public policies favoring disclosure. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178-1179 (9th Cir. 2006). There are two separate legal standards to determine whether a document is sealable. The “good cause” standard

1 applies when the motion at issue is only tangentially related to the underlying cause of
 2 action, and the “compelling reasons” standard applies when the motion at issue is
 3 more closely related to the underlying cause of action. *See Ctr. for Auto Safety v.*
 4 *Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016); *see also Pintos v. Pac.*
 5 *Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (holding that “good cause”
 6 standard generally applies to non-dispositive motions because they “‘are often
 7 unrelated, or only tangentially related, to the underlying cause of action’”) (quoting
 8 *Kamakana*, 447 F.3d at 1179)).

9 The good cause standard applies here because, as courts have held, documents
 10 filed in support of a motion for attorneys’ fees do not relate to the merits of the case.
 11 *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2 (N.D. Cal.
 12 Mar. 16, 2018) (citing *Ctr. for Auto Safety* to apply the “good cause” standard to
 13 documents associated with attorneys’ fees motion); *In re Cathode Ray Tube (CRT)*
 14 *Antitrust Litig.*, 2016 WL 7785855, at *1 (N.D. Cal. Oct. 3, 2016) (same).

15 **B. Plaintiff Seeks a Narrowly Tailored Seal Order to Protect Peer**
 16 **Monitor Information, Which Is Subject to an Agreement that**
 17 **Precludes the Dissemination of Data to Third Parties.**

18 Good cause exists for Plaintiff’s request to seal portions of the Mortimer
 19 Declaration and the Peer Monitor exhibits because, while relevant, the foregoing are
 20 only tangentially related to the litigation, and Hunton has expressly agreed to keep
 21 such information confidential. District courts within the Ninth Circuit have routinely
 22 held that private confidentiality agreements constitute “good cause” justifying a
 23 motion to seal. *See, e.g., Cty. of Santa Clara v. Astra USA, Inc.*, 257 F.R.D. 207, 215
 24 (N.D. Cal. 2009); *Skokomish Indian Tribe v. Goldmark*, 2013 WL 6086075, at *2
 25 (W.D. Wash. Nov. 19, 2013); *Pike v. Hester*, 2013 WL 3491222, at *7 (D. Nev. July
 26 9, 2013); *Boucher v. First Am. Title Ins. Co.*, 2011 WL 5299497, at *5 (W.D. Wash.
 27 Nov. 4, 2011).

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Good cause also exists because the Peer Monitor data consists of confidential, proprietary, and commercially sensitive information belonging to a third party. *See, e.g., Fed. Trade Comm’n v. Qualcomm Inc.*, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3, 2019) (granting motion to seal under the more stringent “compelling reasons” standard because failure to do so may harm the party or third parties’ “competitive standing and divulges terms of confidential contracts, contract negotiations, or trade secrets”); *Network Appliance, Inc. v. Sun Microsystems Inc.*, 2010 WL 841274, at *2 (N.D. Cal. Mar. 10, 2010) (sealing portions of declaration under the “compelling reasons” standard “in light of the confidential nature of the information and the competitive harm to third parties if the confidential information were disclosed.”).

To submit the rate analysis information in support of its Supplemental Memorandum, Hunton was required to sign a Waiver Agreement with West Publishing Corporation (“West”), a Thomson Reuters business. The agreement requires Hunton to seek an order permitting the Peer Monitor data to be submitted under seal because West deems the information proprietary and commercially sensitive in nature. Plaintiff has narrowly tailored the aforementioned seal request to include only those portions reflecting West’s confidential and proprietary data. Plaintiff, therefore, respectfully requests that the Court issue an order permitting it to file the above-referenced documents under seal.

C. Plaintiff Seeks a Narrowly Tailored Seal Order to Protect Information Revealing Attorney-Client Communications or Attorney Work Product

Plaintiff requests to seal, by redaction, certain portions of the task entry narrative column of Exhibit A to the Mortimer Declaration, which disclose work product or privileged communications. Courts in this Circuit have routinely concluded that material protected by the attorney-client privilege or work product privilege meet both the compelling reasons test and the less-stringent good cause test

1 for filing under seal. *See, e.g., Ervine v. Warden*, 214 F. Supp. 3d 917, 921 (E.D. Cal.
2 2016) (finding a compelling need to file attorney-client privileged information under
3 seal); *In re Hewlett-Packard Co. Shareholder Derivative Litigation*, 2016 WL
4 8570883, at *6 (N.D. Cal. Nov. 18, 2015), *adopted* 2015 WL 8479543
5 (recommending that sealing motion be granted under compelling reasons standard
6 based on concerns regarding attorney-client privilege and work product). Indeed,
7 “[u]nder Ninth Circuit authority, ‘attorney-client privilege embraces attorney time,
8 records and statements to the extent that they reveal litigation strategy and the nature
9 of the services provided.’” *Travelers Property Cas. Co. of America v. Centex Homes*,
10 2013 WL 707918, at *1 (N.D. Cal., Feb. 26, 2013) (sealing descriptions of work
11 performed by attorneys).

12 Here, the detailed time entry descriptions that Plaintiff seeks to file under seal
13 contain information protected by either (1) the attorney-client privilege, because it
14 reveals the content of a communication with a client; or (2) the work product doctrine,
15 because it reveals Plaintiff’s counsel’s mental impressions, conclusions, opinions, or
16 legal theories. Plaintiff’s request is narrowly tailored, as Plaintiff does not seek to seal
17 Exhibit A in its entirety, but rather seeks only to seal, by redaction, specific portions
18 of Exhibit A that contain privileged information. Accordingly, Plaintiff respectfully
19 requests that the Court allow it to file the privileged portions of Exhibit A under seal.

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1 **III. CONCLUSION**

2 For these reasons, the Court should permit Plaintiff to file under seal portions of
3 the Mortimer Declaration, portions of Exhibit A, and Exhibits B and C in their
4 entirety.

5
6 Dated: January 25, 2022

HUNTON ANDREWS KURTH LLP

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